IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5099 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M/S.WIPRO LIMITED

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 5099 of 1990

MR AR MAJMUDAR for Petitioner No. 1

MS ARCHANA RAWAL, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 24/02/2004

ORAL JUDGEMENT

This petition is filed under Article 226 of the Constitution of India praying for quashing and setting aside the order dated 11.07.1990 passed by the respondent

No.2 i.e. City Mamlatdar and Licensing Officer, Bhavnagar whereby the licence granted under Gujarat Essential Articles (Licensing Control and Stock Declaration Order), 1981 was suspended for a period of 60 days.

2. This petition was admitted on 16.07.1990 and this Court has granted interim relief staying the operation of the impugned order passed under Clause 8 of the Gujarat Essential Articles (Licensing Control and Stock Declaration Order), 1981.

3. Mr. A.R. Majmudar, the learned advocate appearing for the petitioner submits that at the relevant point of time, the above order was in force under which such licenses were to be issued and for breach thereof, the same were liable to be cancelled or suspended. However, the Ministry of Consumer Affairs, Food and Public Distribution issued an order dated 15.02.2002 in exercise of powers conferred under Section 3 of the Essential Commodities Act, 1955 whereby the definition of "dealer" given in Section 2 (1) was amended to the effect that dealer means any person engaged in the business of purchase, movement, sale, supply, distribution or storage for sale of any of the commodities specified in clause 3 of the said order, directly or otherwise, whether as a wholesaler or retailer and whether or not in conjunction with any other business and his representative or agent. It was further made clear that with coming into force of this order any dealer can freely buy, stock, sell, transport, distribute, dispose, acquire, use or consume any quantity of wheat, paddy/rice, edible oilseeds etc. and it shall not require a permit or license under any order issued under the Essential Commodities Act, 1955. Therefore, the petitioner does not require to take any license in view of the said order. He has further submitted that a letter was written on 03.06.2003 by the Additional Secretary, Govt. of India, Ministry of Consumer Affairs, Food and Public Distribution wherein reference was made to the various cases filed including M/s. Saurashtra Oil Mills Association in the context of the Central Order dated 15.02.2002 i.e. Removal of (Licensing requirements, Stock Limits and Movement Restrictions) on specified Foodstuffs Order, 2002. It was clarified in the said letter that the definition of 'dealer' appearing in the aforesaid order of 2002 includes producers, manufacturer, importers and exporters. He has further submitted that possibly the clarification made in the letter may not be sufficient and hence, the Central Government has issued a Notification on 16.06.2003 wherein the word manufacturer

and producer is also included in the definition of dealer given under Section 2 of the Act. In view of this subsequent development, he submits that the petitioner being the manufacturer does not require to obtain any license and since the original suspension order was stayed by this Court and now the petitioner is not required to obtain any license, the order of suspension ought to have been quashed and set aside and the petition may be allowed.

4. Ms. Archana Rawal, learned AGP submits that since the life time of the suspension order was only for 60 days, as soon as the said period of 60 days is over, the petition became infructuous and hence, it is to be accordingly dismissed.

5. After having heard learned advocate appearing for the respective parties, I am of the view that the impugned order suspending the license of the petitioner for the period of 60 days came to an end as soon as the period of 60 days was over. Even otherwise, said order has been stayed by this Court and hence, suspension order has not come into effect. The said suspension order has been stayed by this Court all throughout during the pendency of this petition and now the Govt. has come forward by way of Notification including the producer and manufacturer in the definition of 'dealer' and hence, no such license is required.

6. In this view of the matter, suspension order does not assume any survival value and hence, the impugned order dated 11.07.1990 is hereby quashed and set aside only to the extent of suspension of license for the period of 60 days. However, it is made clear that the irregularities which are mentioned in the said order and on the basis of which if any other actions are taken by the authorities against the petitioner, the said actions could not be affected by quashing and setting aside of this order in these proceedings. With this observation, the impugned order is quashed and set aside to the above extent. The petition is allowed. Rule is made absolute without any order as to costs.

[K.A. PUJ, J.]
#Savariya#